In respect of the 3rd appellant, he has been sentenced to the Boys' Home for a period of one year. His probation report before this court shows that his family relationship is good and that he is learning to become a tailor with his mother who is the proprietress of a dress-making shop, and that he is being paid pocket money of between $80/- and $100/- a month. He has ceased to be a youthful offender. The question is consider is whether section 294 applies to him. It has been argued on the one hand that that section does apply to the 3rd offender because he has ceased to be a youthful offender. The question to consider is whether the time for determining whether the 3rd appellant is a youthful offender is at the time of the commission of the offence. It is to be noted that under the provisions of section 293(i) of the Criminal Procedure Code the words "is convicted" are couched in the present tense, whereas the words "has been convicted" under section 294(i) are couched in the past perfect tense. I am inclined to the view that, because of the different wording in the two sections, and having regard to the power conferred upon this court in appropriate cases to alter the nature of the sentence of the appellant, section 294 does not debar this court from invoking it if the appellant at the time of the appeal has ceased to be a youthful offender. Accordingly, I would make the same order in respect of the 3rd appellant that is, that his sentence is set aside and that in lieu thereof he is placed on probation for a period of 3 years on his entering into a bond to appear and receive judgment if and when called upon, and in the meantime to be of good behaviour, and that it shall be a condition of the bond that he shall, during his probation period, be placed under the supervision of the Senior Probation Officer, or the Probation Officer, Kuching, and obey the reasonable instructions of the Senior Probation Officer or the Probation Officer, Kuching, as may be given to him from time to time.

In respect of each of the appellants, there shall be two sureties in the sum of $3,000/- each. As regards the 1st appellant, one of the sureties shall be the mother; in respect of the 2nd appellant, one of the sureties shall be the mother; in respect of the 3rd appellant, one of the sureties shall be the mother; and in respect of the 4th and 5th appellants, the sureties shall be the parents in each case.

Before I leave this case, I would emphasize that the course I am taking may be considered to be exceptional, having regard to the character and antecedents and the public interest involved, including the factor that the appellants are young offenders and that generally they should be kept out of prison. I need hardly emphasise that gang robbery is a very serious offence and generally would merit the harshest of punishments if an offender is convicted, and this case cannot by any means be regarded as a precedent. The appellants are impressed upon that the effect of the order I make in respect of each of them is to give them an opportunity to turn over a new leaf and to be good citizens and that, if during the period of their probation, *i.e.* 3 years, they should breach any condition of their bond, they will be brought before the court and sentenced for the original offence of which they have been convicted.

Order accordingly.

Solicitors: *Ibrahim & Co.; Chan & Chan; Chan, Jugah, Wan Ullok & Co.*

KOK WEE KIAT v. CHONG HON NYAN WONG CHWEE LAI v. CHONG HON NYAN CHOO CHONG HEE v. CHONG HON NYAN CHAN SIANG SUN v. MALAYSIAN CHINESE ASSOCIATION.

[O.C.J. (Wan Hamzah J.) July 20, 1984]
[Kuala Lumpur – Suit Nos. A3, A4, A5 & A6 of 1984]

Societies – Political party – Suspension of its branches – Whether valid – Expulsion of members – Whether valid – Fictitious members – Validity of extraordinary meeting – Serious questions to be tried – Whether injunctions should be granted.

In these four civil suits, the plaintiffs, members of the Malaysian Chinese Associations (MCA), sued the MCA in the name of its Secretary-General Chong Hon Nyan. The plaintiffs applied by summonses-in-chambers mainly for interlocutory injunctions to restrain the MCA from holding certain divisional assemblies for the purposes of electing delegates to its General Assembly. The suits arose out of the suspensions of the relevant branches of the MCA affecting the rights of the plaintiffs. The applications were consolidated and heard together. The crux of the contentions for all the plaintiffs was that their respective branches were wrongfully suspended by the MCA and that the suspension was in contravention of its constitution. In the case of the plaintiff (Wong) in Suit A4/1984 he also claimed that he was wrongfully expelled from MCA. The plaintiff in Suit A6/1984 raised the issue of fictitious members on the register of the MCA and the resolution passed on May 6, 1984 at the adjourned extraordinary meeting of the General Assembly convened by request of 1,499 delegates.

On behalf of MCA, it was contended that the suspensions of the branches were undertaken in compliance with Article 127 of the MCA Constitution, and likewise the expulsions of Wong and some other members were undertaken in compliance with that Article. The suspended branches and Wong had failed to exercise their rights to appeal to the Central Committee of MCA and that failure to exhaust the domestic remedies was fatal to their suits. It was contended by MCA that the system in force in its set-up to detach and flush out fictitious members was at all times adequate and effective and that the plaintiffs or their supporters could have lodged complaints through the proper channels and had them resolved without resorting to measures outside the MCA machinery.

Held: (1) it was open to the plaintiffs to bring the present suits without having recourse to domestic remedies first;

(2) there were serious questions to be tried in these suits. These questions will be tried in order to find the answer to the issue whether the expulsion of members and the suspension of branches of the Disciplinary Board were valid. Other serious issues to be tried were whether the extraordinary meeting of the General Assembly held on May 6, 1984 was unconstitutional and whether the resolutions passed at that meeting were invalid. The plaintiffs' claims in all these suits were not frivolous or vexatious;

(3) interlocutory injunctions should therefore be granted in all the suits.

Cases referred to:

(1) *White & Ors.* v. *Kuzych* [1951] A.C. 585.
(2) *Datuk Pasamanickam & Anor.* v. *Agnes Joseph* [1980] 2 M.L.J. 92.
(3) *Tharmalingam* v. *Sambanthan* [1961] M.L.J. 63

SUMMONSES-IN-CHAMBERS.

Kok Wee Kiat in person as plaintiff in suit No. A3/1984.

Raja Abdul Aziz Addruse and *Darryl Goon* for the plaintiffs in Suit Nos. A4/1984 and A5/1984

Cecil Abraham for the plaintiff in Suit No. A6/1984.

Param Cumarasamy and *C.V. Dass* for the defendants in Suits Nos. A3/1984 A4/1984 A5/1984 and A6/1984.

Cur. Adv. Vult.

Wan Hamzah J.: In Summons-in-Chambers dated May 10, 1984 in Suit No. A3/1984, the Plaintiff Kok Wee Kiat applies for the following orders of injunction:—

(1) (i) An interlocutory injunction to restrain the Malaysian Chinese Association (the Defendant Association), its members agents or servants or otherwise from holding any Divisional Assembly for the purposes of electing Divisional delegates to the General Assembly;

(ii) Or alternatively an interlocutory injunction to restrain the Defendant Association the Kuala Lumpur Bandar Division of the Defendant Association its members agents or servants or otherwise from holding the Kuala Lumpur Bandar Divisional Assembly on May 19, 1984 or any other Kuala Lumpur Bandar Divisional Assembly for the purposes of selection of delegates to the General Assembly.

(2) An interlocutory injunction to restrain the Defendant Association its members agents or servants or otherwise from issuing any notice calling for any Divisional Assembly and/or making any nomination of Divisional delegates to the General Assembly.

(3) An interlocutory injunction to restrain the Defendant Association its members agents or servants or otherwise from holding elections at the 32nd Annual General Assembly or any other General Assembly.

Wong Chwee Lai @ Wong Chew the Plaintiff in Suit No A4/1984 applies in Summons-in-Chambers dated May 10, 1984 for the same orders of injunction as above except that the second alternative injunction in prayer (1) of Wong Chwee Lai reads —

(ii) Or alternatively an interlocutory injunction to restrain the Defendant Association the Petaling Division of the Defendant Association its members agents or servants or otherwise from holding any Petaling Divisional Assembly for the purposes of electing delegates to the General Assembly.

Choo Chong Hee the Plaintiff in Suit No. A5/1984 applies in Summons-in-Chambers dated May 10, 1984 for the same orders of injunction as applied for by the Plaintiff in Suit No. A4/1984.

Chan Siang Sun the Plaintiff in Suit No. A6/1984 on behalf of himself and 1,499 others applies in Summons-in-Chambers dated May 11, 1984 for an order of interlocutory injunction to restrain the Defendant Association by its servants and/or agents from holding elections to elect delegates at all divisional levels of the Defendant Association, which are scheduled to commence from May 13, 1984.

All of the summonses were served on the Defendant Association, and at the request of the parties they were consolidated and heard together.

The structure of the Malaysian Chinese Asso-

ciation (MCA) as provided in its Constitution is as follows: It consists of the branches at the base, the divisions at the middle and the Central Committee at the top. Every member must belong to a branch. The members of each branch elect their office bearers. All branches in a parliamentary constituency belong to and form part of a division. Each branch sends delegates to the assembly of the division to which it belongs. Each branch is entitled to elect one delegate for every ten of its members. Each division sends delegates to the General Assembly. Each division is entitled to elect one delegate for every 100 members within the division. At the General Assembly each delegate has one vote. The General Assembly elects party officials and Central Committee members.

Kok Wee Kiat the Plaintiff in Suit No. A3/ 1984 has been a member of MCA since 1972. He belongs to the Kuala Lumpur Municipality Branch, which belongs to the Kuala Lumpur Bandar Division. He gave the following grounds for applying for the orders of injunction:—

(a) The following two branches in the Kuala Lumpur Bandar Division were wrongfully suspended by MCA through its Disciplinary Board on about the following dates:

Kuala Lumpur Municipality Branch	April 13, 1984
Pudu Branch	April 7 1984

(b) The following resolutions passed by the Extraordinary Meeting of the General Assembly held on May 6, 1984 have been disregarded and not given effect to by the Acting President or the Secretary-General:—

"(i) All orders of suspension and expulsion made under Article 127 of the Constitution after 18.3.1984 and before the passing of this resolution be and are thereby annulled and declared void with immediate effect.

(ii) All powers under Article 127 of the Constitution be suspended until the election of MCA office bearers at all levels in 1984 are completed."

(c) Certain divisions have wrongly carried out divisional assemblies in contravention of the rules made by MCA governing the elections of office bearers at all levels.

Relating to the wrongful suspension of the branches Kok Wee Kiat alleges as follows. The Disciplinary Board did not have the powers to suspend the branches. Even if it had such powers it did not exercise its powers under Article 127 correctly. In deciding to suspend the Kuala Lumpur Municipality Branch it acted wrongfully and in contravention of MCA's Constitution, in that at all material times only two of its three members were present to consider the matter and to make the decision. In respect of the suspension of the Kuala Lumpur Municipality Branch, the Branch was never given any notice of any disciplinary proceedings proposed to be taken against it or any reason therefore. It was never given any opportunity to be heard by the Disciplinary Board. It was never given any grounds for its suspension. The two members of the Disciplinary Board who made the decision to suspend, *i.e.* Mak Hon Kam and Lim Kean Siew, had a direct interest in the subject matter and were biased and prejudiced. They were aware that the Kuala Lumpur Municipality Branch does not have faith in their leadership and in the present leadership of MCA, and that it fully supports Tan Koon Swan and certain others who have expressed their intention to stand for election to the Central Committee.

Kok Wee Kiat avers that there are numerous divisions which have not held their divisional assemblies; and if they are allowed to hold their divisional assemblies, he would suffer irreparable damage. He has been intending to stand for election at the Kuala Lumpur Municipality Branch and for election as a delegate to the Kuala Lumpur Bandar Division. It is also his aim to stand for election as Chairman of the Kuala Lumpur Municipality Branch and if successful to stand for election for a Central Committee seat. He avers that by wrongfully suspending the Kuala Lumpur Municipality Branch, MCA has prevented him from carrying into effect his said intentions and has deprived him of the basic rights and privileges which he is entitled to as a member of MCA, and he is also deprived of the support which he would have got from the members of the Kuala Lumpur Municipality Branch and Pudu Branch, and of the right to support Tan Koon Swan and other MCA members who intend to stand for election to the Central Committee.

In his affidavit dated May 14, 1984 Dato Lee Boon Peng alleged that he had not received any notice of meeting of the Disciplinary Board since March 17, 1984, and he confirmed that he had not attended any meeting of the Disciplinary Board since that date. He also stated that he had not received any notice of having been removed as a member of the Disciplinary Board.

Wong Chwee Lai the Plaintiff in Suit No. A4/

1984 has been a member of MCA since 1974. He belongs to Petaling Division. He was the Chairman of the Kuchai Branch. He gives the following grounds to support his application for orders of injunction:—

(a) (i) On or about April 6, 1984 MCA through its Disciplinary Board wrongfully suspended the Kuchai Branch.

(ii) MCA through the Disciplinary Board wrongfully expelled him from MCA.

(b) The same ground as ground (b) of Kok Wee Kiat.

(c) The same ground as ground (c) of Kok Wee Kiat.

For contending that the Kuchai Branch was wrongfully suspended and that he was wrongfully expelled, Wong Chwee Lai gave the same reasons as given by Kok Wee Kiat for alleging that the Kuala Lumpur Municipality Branch was wrongfully suspended. Wong Chwee Lai further alleges that relating to his expulsion he was never given notice of any disciplinary proceedings proposed to be taken against him or any reason therefore. He was never given any opportunity to be heard by the Disciplinary Board, and he was never given any grounds for his expulsion. He avers that Mak Hon Kam and Lim Kean Siew were aware that he and the Kuchai Branch do not have faith in their leadership and in the present leadership of MCA, and that they support Tan Koon Swan and certain others who have expressed their intention to stand for election to the Central Committee. He avers that if the divisions which have not held their divisional assemblies are allowed to do so, he would suffer irreparable damage. He has been intending to stand at the Kuchai Branch election and for election as a delegate to the Divisional Assembly. His aim is to stand for election as Chairman of the Petaling Division and if successful to stand for election for a Central Committee seat. He avers that by wrongfully suspending the Kuchai Branch and expelling him, MCA has prevented him from carrying into effect his intentions and has deprived him of the basic rights and privileges which he was entitled to as a member of MCA, and he has also been deprived of the support that he would have got from the members of the Kuchai Branch and of his right to support Tan Koon Swan and other MCA members who intend to stand for election to the Central Committee.

Choo Choong Hee the Plaintiff in Suit No. A5/1984 has been a member of MCA since 1974. He belongs to the Puchong Branch, which belongs to the Petaling Division. He has been the chairman of the Puchong Branch since 1974, vice-chairman of the Petaling Division, chairman of the Petaling Division Youth Wing and an elected Central Committee member of MCA Youth. His grounds for applying for orders of injunction are:—

(a) On or about April 6, 1984 MCA through its Disciplinary Board wrongfully suspended the Puchong Branch.

(b) The same ground as ground (b) of Kok Wee Kiat.

(c) The same ground as ground (c) of Kok Wee Kiat.

For contending that the Puchong Branch was wrongly suspended, Choo Choong Hee relies on the same reasons as relied upon by Kok Wee Kiat for contending that the Kuala Lumpur Municipality Branch was wrongfully suspended. Choo Choong Hee further alleges that in respect of the suspension of the Puchong Branch, the Branch was never given any notice of any disciplinary proceedings proposed to be taken against it or any reason therefore. It was never given any opportunity to be heard by the Disciplinary Board, and it was never given any grounds for suspension. He avers that Mak Hon Kam and Lim Kean Siew were aware that the Branch does not have faith in their leadership and in the present leadership of MCA, and that it fully supports Tan Koon Swan. He avers that if the divisions which have not held their divisional assemblies are allowed to do so he would suffer irreparable damage. He intends to stand for the Puchong Branch election and for election as a delegate to the divisional assembly. His aim is to stand for election as chairman of the Petaling Division and if successful to stand for election for a Central Committee seat. He alleges that by wrongfully suspending the Puchong Branch, MCA has prevented him from carrying into effect his intention, and has deprived him of the basic rights and privileges which he is entitled to as a member of MCA, and has deprived him of the support that he would have got from the members of the Puchong Branch, and of his right to support Tan Koon Swan.

Chan Siang Sun the Plaintiff in Suit No. A6/1984 has been a member of MCA since 1959. He belongs to the Bentong Town Branch, which belongs

to the Bentong Division. He is one of the vice-presidents of MCA and a member of its Central Committee. In his affidavit in support of his application for an order of injunction he states the following facts. The issue of fictitious members on the register of MCA was raised by various officials of MCA, the first time in about December 1983. At a meeting of the Central Committee of MCA on March 17, 1984 the issue was raised and a request was made for a set of the membership register as at December 1983 and a list of new members admitted through orientation courses. It was also proposed at the meeting that an Ad Hoc Committee be appointed to look into the question of the membership register. The request and the proposal were turned down by MCA. Then Tan Koon Swan submitted a petition on behalf of 15 members of the Central Committee calling for an extraordinary meeting of the General Assembly in accordance with Article 34.2 of the Constitution of MCA. The petition was not met with, and Tan Koon Swan and 13 other members of MCA were expelled, 49 delegates to the General Assembly were expelled and 121 branches of MCA were suspended.

In his affidavit in support the Plaintiff states further as follows. A request was made by 1,499 delegates for an extraordinary meeting of the General Assembly to be held, pursuant to Article 34.3 of the Constitution. The following reasons for the request were given:—

(a) Reports and complaints alleging that new members had been fraudulently and improperly admitted into MCA and admission made openly by the chairmen/secretaries of four branches in Petaling Division of the existence of fictitious members in their branches.

(b) Wide publicity given by the press of some of the indents much to the detriment of the status, image and standing of MCA. To prevent further detriment the appointment of an independent ad hoc committee in General Assembly is urgently required, to investigate and to remove any doubts over membership.

(c) Fifteen Central Committee members (named therein) had requisitioned for an extraordinary meeting for the above reasons but some were unjustly expelled.

The request was handed to the Deputy Secretary-General of MCA on March 23, 1984, but no meeting was convened by MCA. So the requisitionists convened the extraordinary meeting of the General Assembly to take place at Hilton Hotel, Kuala Lumpur on April 29, 1984. It appears that another group in MCA organised another gathering of members at another place in Kuala Lumpur to take place on the same date. Ketua Polis Kuala Lumpur advised those concerned to cancel both meetings in the interest of public peace. In any case there was no quorum for the extraordinary meeting on that date and it adjourned to and was held on May 6, 1984. One of the resolutions passed at that meeting was the following:—

> That the MCA elections of office bearers in all branches and divisions scheduled for March to May 1984 be suspended, or if carried out such elections or proceedings are void and of no effect except those elections as are accepted valid by the Ad Hoc Committee, and the elections be commenced within 30 days after the Ad Hoc Committee has finalised the membership list of MCA as at December 31, 1983.

It is contended by Chan Siang Sun that the suspension of the branches will result in a disproportionate representation of delegates to the General Assembly by the divisional assembly, and it is advantageous to MCA to continue to suspend branches which it considers not sympathic to its cause. It is further contended that until the issue of the membership register of MCA is investigated into and ensured as correct it will result in branches with fictitious members being able to enlarge the number of elected delegates to represent them at the General Assembly and this will result in a disproportionate representation of delegates at the General Assembly, and therefore until the question of the membership register is resolved the divisional elections should not be held.

On behalf of the Defendant Association (MCA), Tan Sri Chong Hon Nyan, the Secretary-General in his affidavit gives the grounds for opposing these applications. He avers that the suspensions of the Kuala Lumpur Municipality Branch, the Pudu Branch and some other branches that form the subject matter of the complaints of the Plaintiffs were undertaken in compliance with Article 127 of the MCA Constitution, and likewise the expulsions of Wong Chew and some other members were undertaken in compliance with that Article. He avers that one of the members of the Disciplinary Board, Dato Lee Boon Peng, never attended meetings of the Disciplinary Board although notified of them, and it was therefore constitutionally and legally proper for the other members to proceed with the deliberations in his absence, and Datuk Dr. Tan Tiong Hong was appointed member of the Board on April 21, 1984 by the Acting President of MCA, in place of Dato Lee Boon Peng. He denied Dato Lee Boon Peng's allegation that he had not received notices of Disciplinary Board meetings since March 17, 1984. He avers further that under the MCA Constitution a sus-

pended branch which is aggrieved with the suspension can appeal to the Central Committee, and on receipt of the appeal letter the suspended branch would be notified of the reasons for its suspension, and the suspended branches had been told to appeal but they failed to do so. The Plaintiff Wong Chew and other expelled members had been told by letters of their right to appeal to the Central Committee and they would on appealing be supplied with the reasons for their expulsion. But neither Wong Chew nor any of the other expelled members have appealed according to the procedure provided in the MCA Constitution. It is contended by the Secretary-General that the failure on the part of the suspended branches concerned and the failure on the part of the Plaintiff Wong Chew to exhaust domestic remedies as provided in the MCA Constitution is fatal to the suits. It is further contended by the Secretary-General that Wong Chew has no *locus standi* or title to sue.

Regarding the Extraordinary General Meeting held on May 6, 1984 it is contended by the Secretary-General as follows:–

(a) It was convened by expelled members and not by the Secretary-General or by the President under Article 34 and was therefore unconstitutional, null and void.

(b) The requisition for the Extraordinary General Meeting by the alleged 1,499 delegates was misconceived because they were the delegates at the previous triennium, and unless re-elected may not be considered delegates for the triennium commencing 1984.

(c) A verification exercise was carried out by the Secretary-General to verify the purported signatures of the alleged 1,499 signatories to the requisition, by asking them to give their specimen signatures before April 15, 1984. Only 766 of them responded. The verification exercise disclosed the following irregularities:–

1. Some of the alleged signatories either never signed or were forced to sign.
2. About 62 of the signatories had not renewed subscriptions for 1983.
3. Some of the delegates had ceased to be delegates because they had been defeated in the general elections.
4. The signatures of some of the alleged delegates did not tally with their signatures on the attendance register for the 1983 General Assembly.
5. One of the alleged delegates was not a delegate.

(d) The Extraordinary General Meeting was unconstitutional and invalid because it was convened by the Speaker of the 31st General Assembly who had no executive power or authority under the MCA Constitution or otherwise to convene meetings.

(e) The EGM was unconstitutional and invalid because the venue is not the designated venue as provided for expressly in the MCA Constitution.

(f) The meeting on May 6, 1984 could not be an adjourned meeting due to lack of quorum on April 29, 1984, because the Police had on April 28, 1984 directed cancellation of the meeting on April 29, 1984.

(g) The EGM held at the time when branch and divisional elections are proceeding was unconstitutional because some of the incumbent delegates were being replaced by new ones and therefore *ipso facto* cease to be delegates.

It is further averred by the Secretary-General that in MCA there was appointed a Steering Committee which introduced certain rules called "Rules Governing the Election of Office-Bearers At All Levels", and which is empowered to supervise elections and to deal with any dispute relating to on-going elections, and therefore the Plaintiffs are acting prematurely in seeking injunctions on complaints that have yet to be determined through the proper process in MCA.

Contending that the Plaintiffs must first exhaust domestic remedies before applying to the court reliance is placed on the following decided cases: *White & Ors.* v. *Kuzych*[1]; *Datuk Pasamanickam & Anor.* v. *Agnes Joseph*[2] and *Tharmalingam* v. *Sambanthan*[3].

I do not think that those cases are applicable. In *White's case* there was an oath of obligation taken by the respondent as a member of the trade union that he should not become a party to any suit at law or in equity against the union until he had exhausted all remedies allowed to him by the constitution and bylaws, and the Privy Council held that the respondent was bound by his contract to appeal to the general workers' federation before he could issue his writ. In *Datuk Pasamanickam's case* there was express provision in the Malaysian Indian Congress Constitution to prohibit members from resorting to court proceedings without first referring to the Central Working Committee, and it was held by the Federal Court that a member was not excluded from going to court but must first refer the matter to the domestic forum. In *Tharmalingam's case* there was a specific finding by the Court of Appeal on interpretation of the provisions of the Malayan Indian Congress Constitution, that a member undertook not to pursue his remedy of having recourse to the court until he had exhausted his remedies under the Constitution, i.e. until he had made his appeal to the Working Committee. In the present cases it is not possible on interpretation of the provisions

of the MCA Constitution to find, as the Court of Appeal did in *Tharmalingam's case*, that members have undertaken not to have recourse to the court until they have exhausted their domestic remedies, because the MCA Constitution purports to completely shut off members from having recourse to the Court. The following articles in the MCA Constitution read –

"130. A member or party affected who is dissatisfied with the decision of the Disciplinary Board may appeal to the Central Committee whose decision shall be final and conclusive.

131. No member who, or party which has been the subject of any disciplinary action or proceedings shall institute any proceedings in any court of Law:–

131. 1. to go into the legality or propriety or otherwise of any action proceedings and/or decision taken by the President, the Central Committee and/or the Disciplinary Board.

131. 2. against the Party, its President, the Central Committee, the Disciplinary Board or any member of any action proceedings and/or decision taken by the President, the Central Committee and/or the Disciplinary Board."

Therefore in my judgment it is open to the Plaintiff's to bring the present suits without having recourse to domestic remedies first.

Even if it was true that there was a contract on the part of the members to exhaust domestic remedies before coming to the court, there is justification for them to come to the court without resorting to domestic remedies first. MCA had fixed dates for holding branch elections from March 24 1984 to April 12, 1984, and for holding division elections from April 22, 1984 to May 20, 1984. Evidence shows that the following branches were suspended on the following dates:–

Puchong	April 6, 1984
Kuchai	April 6, 1984
Pudu	April 7, 1984
Kuala Lumpur Municipality	April 13, 1984
Mantin Ward	April 13, 1984

Ninety-seven other branches were suspended before May 6, 1984 but so far there is no evidence of the dates when they were suspended. Probably they were suspended on about the same dates as the above five branches. Evidence shows that appeal from the Mantin Ward Branch was received at the MCA headquarters on May 7, 1984 and from Ulu Klang New Village Branch on May 11, 1984. As on the date of the affidavit of Secretary-General, i.e. May 15, 1984 these appeals had not been disposed of yet. The Secretary-General stated that the branches that had appealed "will have their appeals referred to the Central Committee and will be notified in due course of their right of a hearing before the Central Committee." It is therefore clear that an appeal would not be dealt with by the Central Committee within two or three days but would take some time before they are disposed of. One would expect that MCA should not fix branch elections to be held at the same time when some branches were being suspended and some members were being expelled. Evidence which has so far been placed before the Court shows that MCA is not in a position to dispose of appeal against suspensions and expulsions before elections. Therefore in my judgment the Plaintiffs are justified in coming to the Court to ask for orders of injunction instead of appealing to the Central Committee because if they had appealed, their appeals would be dealt with only after branch elections and probably even after division elections, and by that time harm would already have been done to them.

I do not see how the Steering Committee of MCA can deal with the question of branch and division elections as effectively as the court can. It has not been suggested that the Steering Committee can direct a division election to be postponed when it is necessary that it should be postponed because some branches in the division had complained that they had wrongfully been suspended and therefore unable to elect their delegates to the divisional assembly. It is not suggested that the Steering Committee can deal with the result of a division election arising from complaint of unfair election on the ground that some branches in the division had wrongfully been suspended or some members had wrongfully been expelled. The evidence which has so far been placed before the court is vague on the extent of the powers of the Steering Committee.

Evidence was furnished to show that the membership lists of the Petaling Division contained numerous Chinese names of members with their respective identity card numbers, which in fact belonged to persons who were Malays or Indians. Affidavits of 26 persons whose names appeared in the membership lists were produced in which they stated that they had never joined MCA. Evidence was also furnished to show that the lists of the youth members of six divisions in Perak contained numerous Chinese names of members with their respective identity card numbers, which

in fact belonged to persons who were Malays or Indians. Evidence was also furnished to show that the membership lists of the Ledang Division in Johore, Kota Melaka Division in Melaka and Shah Alam Division in Selangor contained similar irregularities. MCA does not deny the existence of fictitious members' names in the membership lists of some branches. According to the affidavit of its Chief Executive Secretary (Mr. Tan Chong Soong), the subject of fictitious members' names appearing in the membership lists referred to above was discussed at the following meetings:–

Central Committee	January 14, 1984
Steering Committee	February 7
Steering Committee	February 14,
Presidential Council	February 29
Central Committee	March 17, 1984

But at those meetings there were made allegations of fictitious names which were general in nature and there were no specific complaints. On March 13, 1984 the Secretary-General of MCA sent out to each Branch Chairman/Secretary a copy of the membership list of that branch for verification of the names in the list. In response many branches submitted complaints relating to fictitious members' names resulting in the headquarters of MCA deleting more than 21,000 fictitious members' names from the membership lists of various branches. Following this, revised membership lists were prepared in May 1984 which are the latest membership lists. Such verification exercise was done in respect of various branches on various dates extending from March 22, 1984 to April 6, 1984. It is alleged by MCA that in respect of the branches which had made specific complaints about fictitious names in their membership lists, elections had been held on the basis of the number of members after verification exercise, but this is disputed by the Plaintiffs. It was contended by MCA that the system in force in the MCA set-up to detect and flush out fictitious members was at all times adequate and effective and that the Plaintiffs or their supporters could have lodged complaints through the proper channels and had them resolved without resorting to measures outside the MCA machinery. Even if it was true that MCA's machinery was adequate for the purpose the fact remains that on the evidence so far placed before the Court it cannot be said for certain that the membership lists of branches and divisions which have not yet held elections are completely free from fictitious names so as to ensure fair elections. Probably verification exercise is also necessary in respect of branches for which such exercise has not been done, and further exercise may not be completed before the dates fixed for the elections. It seems that the MCA's system is to wait for specific complaints before verification exercise is done, and there is no evidence to show that MCA had taken verification steps on its own initiative. Probably because of this, longer time will be required to get membership lists verified and ready for use in elections. Evidence shows that in respect of many branches all the names in the membership lists were deleted as the result of verification exercise. There may be some branches in which the membership lists consist wholly of fictitious members' names, and MCA should not expect to receive complaints from such branches as there would be no genuine members from such branches to make the complaints. There were not only fictitious members but also fictitious branches.

I find in these suits several serious questions to be tried. Some of such questions are whether Dato Lee Boon Peng was notified of the Disciplinary Board meetings to be held and whether it was legally proper for the other members of the Disciplinary Board to deliberate and make decisions in his absence. These questions will be tried in order to find the answer to the issue whether the expulsion of members and the suspension of branches by the Disciplinary Board were valid. Other serious issues to be tried are whether the extraordinary meeting of the General Assembly held on May 6, 1984 was unconstitutional and whether the resolutions passed at that meeting were invalid. The Plaintiffs' claim in all of the suits are not frivolous or vexatious.

In my opinion if interlocutory injunction were not granted and the Plaintiffs in Suits No. A3, A4 and A5 were successful at the trial, they would not be adequately compensated for the loss that they would have sustained as the result of elections being held as planned by MCA, because they would lose the chance of being elected at divisional assemblies as delegates to the General Assembly and they would lose the chance of being elected to the Central Committee. On the other hand if interlocutory injunction were granted and MCA were successful at the trial, the loss which MCA would have suffered as the result of the elections not being held, would be sufficiently compensated by the award of damages because elections could still be held after the trial, and the loss to MCA would probably be only expenses incur-

red for the preparations already made for the divisional assembly meetings about to be held now, and the Plaintiffs are in a financial position to pay the damages. As regards Suit No. A6, if interim injunction were not granted and the Plaintiff would eventually succeed at the trial, a judgment for the Plaintiff would be merely academic as it would be too late then to put into effect the resolutions passed at the extraordinary meeting. Therefore in my judgment interlocutory injunction should be granted in all the Suits.

The Plaintiffs respectively undertaking to pay damages which they ought to pay in the event that the court will subsequently be of opinion that these orders should not be granted, I grant orders of interlocutory injunction as follows:–

Suit No. A3/1984:

Order in terms of the first alternative in prayer 1 and in terms of prayers 2 and 3.

Suite No. A4/1984:

Order in terms of the first alternative in prayer 1 and in terms of prayers 2 and 3.

Suite No. A5/1984:

Order in terms of the first alternative in prayer 1 and in terms of prayers 2 and 3.

Suite No. A6/1984:

Order in terms of the summons.

I order that costs should be costs in the cause.

Order accordingly.

Solicitors: *Shook Lin & Bok; Mah Kok & Din; Shearn Delamore & Co.*

LEE LIONG CHAN & ANOR v. TAN SRI DATUK TEH EWE LIM & ANOR.

[O.C.J. (Edgar Joseph Jr.J.) July 13, 14 & 23, 1984]

[Penang – Civil Suit No. 501 of 1984]

Societies – Political party – Election – Change of venue – Validity of disputed notice – Serious question to be tried – Balance of convenience – Equitable considerations.

The 1st plaintiff was the secretary of the Sungei Nibong Branch ('the Branch') of the Parti Gerakan Rakyat Malaysia ('the Party') and the 2nd plaintiff a committee member of the Branch. They sued the two defendants who were the Secretary General of the Party and the Chairman, State Elections Supervisory Committee respectively. The suit out of which this application arose concerned the validity of a Notice dated July 6, 1984 signed by the 1st defendant ('the Disputed Notice') calling for Branch Elections on July 15, 1984 ('the Branch Elections'). The plaintiffs claimed it was void and of no effect because he was not authorized to do so under the relevant provisions of the Party Constitution. The plaintiffs sought a declaration to that effect and they made the present application for an interlocutory injunction to restrain the defendants from holding the election of office bearers for the years 1984/1985 for the Branch of the Party on July 15, 1984 at the Pesta Grounds, Sungei Nibong, Pulau Pinang.

According to the defendant, there was protest against the choice of Balai Raya, Sungei Ara, as the venue for the Branch Elections. Eventually it was changed to the Pesta Grounds which was found to be more suitable. The 1st defendant signed the Disputed Notice which had to be sent because of the change of venue. Both plaintiffs had filed their nomination papers at the Headquarters. The validity of the Disputed Notice depended on the interpretation of certain provisions in the Rules and the Constitution quoted in the judgment.

Held: (1) the Disputed Notice was valid and effective for all purposes;

(2) general equitable considerations barred the plaintiffs' claim for an injunction;

(3) there was no serious question to be tried. The balance of convenience favoured the defendants rather than the plaintiffs since the institution of fresh election procedures would necessarily entail much expense, time and effort and most probably serve no practical purpose.

Cases referred to:

(1) *Erinford Properties Ltd. & Anor.* v. *Cheshire County Council* [1974] Ch. 261.

(2) *American Cyanamid Co.* v. *Ethicon Ltd.* [1975] 1 All E.R. 504.

(3) *Re State of Wyoming Syndicate* (1901) 2 Ch. 431.

(4) *Cooper* v. *Kerr Steward & Co.* [1900] 83 L.T. 729.

(5) *Colquhoun* v. *Brooks* (1889) 14 App. Cas. 493, 506. (1888) 21 Q.B.D. 52, 65.